

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

JOHN A. HIRSCH and RONALD W.
ZOLLA, Individually and as officers,
directors, and shareholders of ZHL, Inc., and
ZHL, Inc.

Plaintiffs,

v.

MICHAEL LAMENSDORF and KATHY
LAMENSDORF, Individually and as
shareholders of ZHL, Inc.,

Defendants.

Civil Action No. 05-10902-DPW

**MEMORANDUM IN SUPPORT OF ASSENTED TO MOTION TO CORRECT
CLERICAL ERROR IN CAPTION IN PAPERS SUBMITTED BY DEFENDANTS**

Defendants Michael Lamensdorf and Kathy Lamensdorf (collectively “Defendants”) move to correct a clerical error in the caption in papers submitted by counsel for Defendants in this case. In support of their motion, Defendants state as follows:

1. Plaintiffs John A. Hirsch and Ronald W. Zolla originally filed a Complaint for Declaratory Judgment (“Original Complaint”) in Massachusetts Superior Court, Essex County, on December 9, 2004. The Original Complaint did not name ZHL, Inc. as a party to the action. Plaintiffs did not serve Defendants with a copy of the Original Complaint.
2. In April, 2005, Plaintiffs subsequently filed and served an Amended Complaint for Declaratory Judgment (“Amended Complaint”) which for the first time named ZHL, Inc. as a plaintiff in this action.
3. While Plaintiffs never served Defendants a copy of the Original Complaint, counsel for Defendants obtained a copy of the Original Complaint from the state court clerk soon after Defendants were served with the Amended Complaint.

4. Defendants filed a Notice of Removal of this case and Memorandum in Support of Notice of Removal with this Court on May 2, 2005. A copy of the Amended Complaint naming ZHL, Inc. as plaintiff was attached to the Notice of Removal filed with the Court.

5. Counsel for Defendants inadvertently caused the caption in the Original Complaint to be used as a template for the caption in Defendants Notice of Removal and Memorandum in Support. As ZHL, Inc. was not named as a plaintiff in the Original Complaint, the caption in the Notice of Removal and Memorandum in Support mistakenly omitted ZHL, Inc. as a plaintiff.

6. This flawed template was also mistakenly used for the captions filed with Defendants' Motion to Dismiss Plaintiffs' Complaint for Declaratory Judgment or in the Alternative Motion to Stay Action ("Motion to Dismiss") , and Defendants' Memorandum of Law in Support of Motion to Dismiss.

7. Defendants have submitted along with the present Motion copies of their Notice of Removal, Memorandum in Support of Notice of Removal, Motion to Dismiss, and Memorandum in Support of Motion to Dismiss with the caption corrected to include ZHL, Inc. as plaintiff. Except for the fact that ZHL, Inc has been added to the caption as a plaintiff, the substance of each of these papers is identical to those originally filed.

8. Plaintiffs assent to Defendant's Motion to Correct Clerical Error in Captions in Papers Submitted by Defendants.

Respectfully submitted,

MICHAEL LAMENSDORF and KATHY
LAMENSDORF

By their attorneys,

/s/ Matthew E. Miller

Brandon F. White, BBO# 525020
Matthew E. Miller, BBO# 655544
FOLEY HOAG, LLP
155 Seaport Boulevard
Boston, MA 02210
(617) 832-1000

OF COUNSEL:

ABEL, BAND, RUSSELL, COLLIER,
PITCHFORD & GORDON, CHARTERED
Michael S. Taaffe (Fla. Bar No. 490318)
240 South Pineapple Avenue
Sarasota, Florida 34230-6948
(941) 366-6660
(941) 366-3999 (fax)

Dated: May 26, 2005